

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

NOV 17 2020

Clerk, U S District Court
District Of Montana
Billings

LUND MINERAL TRUST,

Plaintiff,

vs.

KRAKEN OIL & GAS, LLC, et al.,

Defendants.

CV 20-72-BLG-SPW

ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

The United States Magistrate Judge filed Findings and Recommendations on November 2, 2020. (Doc. 12). The Magistrate recommended that Defendant Kraken Oil's Motion to Dismiss be Granted. (Doc. 12 at 1).

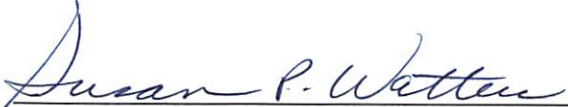
Pursuant to 28 U.S.C. § 636(b)(1), parties are required to file written objections within 14 days of the filing of the Magistrate's Findings and Recommendation. No objections were filed. When neither party objects, this Court reviews the Magistrate's Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). After reviewing the Findings and Recommendation, this Court does not find that the Magistrate committed clear error.

Complete diversity of citizenship does not exist between the parties here because a member of Kraken Oil & Gas LLC and Plaintiff are both citizens of Montana. A federal court cannot exercise its jurisdiction over a case unless the case involves a question arising under federal law or complete diversity of citizenship exists between the parties involved. *See* 28 U.S.C. § 1331; 28 U.S.C. § 1332. Plaintiff did not object to this finding of a lack of diversity and agreed dismissal was appropriate. Kraken Oil also requested costs pursuant to 28 U.S.C. § 1919, but this Court agrees with the Magistrate that an award of costs is not necessary here as Plaintiff conceded to dismissal and did not act unreasonably by filing the lawsuit. Therefore,

IT IS ORDERED that the proposed Findings and Recommendations entered by the United States Magistrate Judge (Doc. 12) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Defendant Kraken Oil & Gas, LLC's Motion to Dismiss is GRANTED, and their request for costs is DENIED. The Clerk of Court is directed to enter judgment in favor of Defendants.

DATED this 17th day of November, 2020.


SUSAN P. WATTERS
United States District Judge